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**LEGAL ASPECTS OF REGIONAL COOPERATION
IN MONITORING, CONTROL AND SURVEILLANCE MATTERS**

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1. [Inter-regional Programme of] Assistance to developing countries for the implementation of the *Code of Conduct for Responsible Fisheries* – Sub-programme C: Assistance to developing countries for upgrading their capabilities in monitoring, control and surveillance (MCS)

2. Legal Officer, Legal Office, FAO, Rome

LIST OF ABBREVIATIONS

APFIC	Asia Pacific Fisheries Commission
ASEAN	Association of Southeast-Asian Nations
DWFN	distant-water fishing nation
EEZ	Exclusive Economic Zone
FFA	South Pacific Forum Fisheries Agency
MCS	Monitoring, Control and Surveillance
SEAFDEC	Southeast Asian Fisheries Development Centre
SEAPOL	South-East Asian Programme in Ocean Law Policy and Management
SRFC	Sub-Regional Fisheries Commission (West Africa)
UNCLOS 1982	United Nations Convention on the Law of the Sea, 1982
VMS	Vessel Monitoring System

1. INTRODUCTION

It is universally recognized that fisheries management without adequate Monitoring, Control and Surveillance (MCS) is difficult, if not impossible. Indeed, MCS helps in the collection of the information needed to manage a fishery, and in enforcing the regulations applicable to the fishery. The concept of MCS refers to the FAO definitions adopted at a Technical Consultation in 1981:

Monitoring: involves the collection, measurement and analysis of fishing activity on catch, species composition, effort, discards, area of operations, etc., which is to assist fishery managers to arrive at management decisions.

Control: involves the specifications of the terms and conditions under which resources can be harvested, and normally contained in national legislation, and provides a basis on which management arrangements are enforced.

Surveillance: involves checking and supervision of fishing activity to ensure national legislation and terms of access and management measures are observed. This activity is crucial to ensure that the resources are not overexploited, poaching is minimized and management arrangements are implemented.

The main purpose of this paper is to identify and discuss the legal aspects of cooperation in MCS as well as the problems which may arise from the implementation of regional collaboration in MCS and to offer a comparative analysis of how MCS is part of the overall process of fisheries management in other regions. It is recognized that regional collaboration in MCS is desirable, but not straightforward. There is an increasing mobility of world's fishing fleets and the issue of compliance with fisheries conservation and management rules cannot simply be confined to one country: this issue requires a sub-regional, regional or global perspective, depending on the particular fishery. Further, catch and effort data is a primary source of information with regard to the status of fisheries and it is important to collect and exchange timely data for both fisheries management and enforcement purposes. MCS of fishing activities as well as enforcement of fisheries conservation and management measures throughout an Exclusive Economic Zone (EEZ) is a major problem that few nations have been able to cope with properly. Countries may lack the resources (e.g., personnel and equipment) for an effective surveillance and control scheme, and

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also for collecting timely and accurate information on the status of the fisheries.

In the Association of Southeast-Asian Nations (ASEAN) region, there is general recognition of the increasing need to ensure sustainable management of fisheries, while complaints are common concerning illegal fishing by foreign vessels from neighbouring or distant-water fishing nations (DWFNs). Further, commercially important pelagic and demersal fish stocks are commonly exploited by more than two countries in a region and straddle adjacent EEZs. A few states have already established cooperative surveillance schemes (e.g., the Philippines and Indonesia have a bilateral agreement on joint surveillance of the Celebes Sea), often for humanitarian reasons, such as search and rescue. Difficulties in cooperation in MCS may result from diverging interests of coastal states in enforcement, significant social, economic or cultural differences, or ongoing maritime territorial disputes.

Regional cooperation in MCS with a view to conserving and managing the living resources both within waters under national jurisdiction and on the high seas is encouraged under the United Nations Convention on the Law of the Sea, 1982 (UNCLOS 1982)¹, the FAO Code of Conduct for Responsible Fisheries², the FAO Compliance Agreement³ and under the 1995 UN Fish Stocks Agreement⁴.

2. LEGAL ASPECTS OF COOPERATION IN MCS

An essential first step towards closer cooperation in MCS is the identification of a coordinating forum with well-defined objectives and a clear work plan. Within the Asian region, there are a number of international and regional organizations or agencies which are currently involved in promoting technical cooperation in fisheries development and marine affairs, and one could argue that a framework for cooperation is in existence. A 1993 study undertaken under the auspices of the FAO Regional Office identified more than 20 intergovernmental organizations, both within and outside the framework of the United Nations, and non-governmental organizations currently engaged in promoting cooperation and collaboration between Southeast Asian countries in the field of fisheries research, development and management. These include ASEAN, Asia Pacific Fisheries Commission (APFIC)⁵ and its subsidiary bodies, and Southeast Asian Fisheries Development Centre (SEAFDEC). It appears that the region would benefit from establishing ways and means for strengthening regional technical cooperation in fisheries.⁶ The majority of the countries represented at this workshop are members of most of these organizations. Further, among the regional programmes, one is particularly known, namely the South-East Asian Programme in Ocean Law Policy and Management (SEAPOL) which deals, *inter alia*, with the 1982 UNCLOS-related legal matters.

Recent developments concerning high seas fisheries, in particular straddling fish stocks

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1. Articles 61(2) and (5), 64(1), 66(3)(d), 73, 118, 119(2)
 2. The *Code of Conduct for Responsible Fisheries* was unanimously adopted on 31 October 1995 by the FAO Conference.
 3. The *1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*; see Article V.
 4. The *1985 Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*. See Articles 5; 10(e), (f), (h); 14.1(b); 25.
 5. Created under Article XIV of the FAO Constitution.
 6. See Report of the Twenty-fourth Session of the former Indo-Pacific Fishery Commission, and the 1994 SEAPOL Conference on Sustainable Development of Coastal and Ocean Areas in Southeast Asia.

and highly migratory species, encourage regional and sub-regional fishery organizations to play a more active role in the conservation and management of these resources. Particularly relevant for the Southeast Asian region in this regard is the 1995 UN Fish Stocks Agreement. The Agreement requires coastal States and States whose nationals fish for straddling fish stocks in the adjacent high seas area to agree upon measures necessary for the conservation of these stocks (Article 7(1)(a)). Further, such cooperation should aim at achieving compatibility between those conservation and management measures established for the high seas and those adopted for areas under national jurisdiction (Article 7). In other words, the implementation of conservation and management measures should as far as possible consider the straddling fish stocks and highly migratory species in their entirety, as one unit, whether or not the stock is inside or outside the waters under national jurisdiction, in order to achieve their long-term, sustainable utilization. Notably, Article 7 of the 1995 UN Fish Stocks Agreement, together with Article 6, dealing with the precautionary approach, applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction and within areas under national jurisdiction. (Article 3(1) of the Agreement).

Part III of the UN Fish Stocks Agreement deals in particular with mechanisms for international cooperation concerning straddling fish stocks and highly migratory fish stocks and obliges States to pursue cooperation in relation to straddling fish stocks and highly migratory species through appropriate regional or sub-regional management organizations and to enter into consultation in “good faith and without delay” (Article 8). It is recognized that the collection of good and reliable information is essential for sound fisheries management. Hence the agreement obliges States to collect and share data on straddling fish stocks and highly migratory species. Part VI deals with international (Article 20), regional and sub-regional cooperation in enforcement (Article 21) and establishes a requirement to board and inspect any fishing vessel flying the flag of a Party to the Agreement that may be in contravention of the arrangement agreed by the organization. Finally, it is worth adding that the Agreement, once entering into force, would be fully implemented only when (an) existing or future sub-regional or regional management organization(s) would be effectively competent to establish conservation and management measures for the highly migratory and straddling fish stocks which pass through their waters.

International cooperation in compliance and enforcement is a matter also dealt with under the FAO Compliance Agreement. Amongst the matters referred to in Article V of the Agreement are the exchange of information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those vessels flying its flag reported to have engaged in activities undermining the effectiveness of international conservation and management measures. Also, there is provision for cooperation between the port State, Party to the Agreement, and the flag State, where a vessel is voluntarily in a port, and is believed to have undermined the effectiveness of international conservation and management measures, and the Parties are urged to enter into cooperative agreements or arrangements of mutual assistance on a global, regional, sub-regional or bilateral basis so as to promote the achievement of the objectives of the Agreement.

To meet the challenge of protecting fisheries resources at a regional or sub-regional level, cooperation towards an effective MCS programme calls for an ongoing and progressive harmonization of fisheries laws and regulations of the countries bordering a relevant region. This philosophy has always been strongly supported by FAO, and is now well advanced in a number of regions, notably Caribbean, South Pacific, and West Africa. This process should focus in particular on those rules regulating access to fisheries resources, regulating the reporting of data, the powers of the enforcement officers and inspectors, as well as on the scale of offences and

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related fines and penalties. Harmonization can facilitate compliance with fisheries laws, in particular if violations result in region-wide implications. It may thus minimize opportunity for fraud. It may also minimize opportunity for fishers to play one country off against another in order to obtain the most favourable treatment. From a legal point of view, though, a major constraint may arise from the presence of different legal systems, such as Roman Dutch systems vs. Common Law systems. This may lead to important variations in the manner in which rules are enforced, in the nature of prosecution systems and in the requirements for proving evidence.

Harmonization should not imply a sacrifice of a country's sovereignty; rather it implies that rules are worded in similar broad terms. The crucial requirement is that the provisions are compatible. The responsibility for enacting conservation and management fisheries rules and enforcing them remains with the States.

3. CASES OF REGIONAL COLLABORATION IN MCS

This chapter intends to highlight how MCS is part of the overall process of fisheries management in the South Pacific area and in West Africa. For other regions, the South Pacific provides an excellent example of the benefits of regional cooperation in MCS. The regional cooperation has significantly enhanced the effectiveness of individual MCS programmes at a relatively low cost. The level of compliance with national fisheries laws and regulations has increased substantially because of the adoption of coordinated policies towards MCS. Likewise, the Regional Register and the development of a regional observer programme contributed to gaining detailed information on vessels, vessel owners, operators and masters as well as important scientific data. In contrast, the West Africa case study shows the many basic goals that can be achieved through more straightforward, less politically-sensitive, initiatives, such as the establishment of a regional vessel register, the adoption of harmonized fisheries laws and regulations, and the establishment of a regional coordinating mechanism for the exchange of information.

3.1 The South Pacific and the South Pacific Forum Fisheries Agency (FFA)

3.1.2 General characteristics

Most of the countries in the South Pacific are classified as small-island developing states and lack the physical enforcement capability needed to apprehend foreign offenders while still in the 200-nautical-mile EEZ, and then to prosecute them by conventional legal processes. Consequently, strong emphasis has been placed on sub-regional and regional cooperation in MCS through regional institutions such as the South Pacific Forum Fisheries Agency (FFA)¹.

The most important commercial fisheries in the South Pacific are the tuna fisheries of the central and western Pacific, based on skipjack (*Katsuwonus pelamis*), yellowfin (*Thunnus albacares*), albacore (*T. alalunga*) and bigeye (*T. obesus*). FAO statistics indicate that some 42% of the total world tuna catch is taken from the South Pacific region (including Indonesia and the Philippines)(FAO Statistical Area 71).

The declaration of 200-mile EEZs or fisheries zones in the early 1980s enabled island

1. FFA was established in 1979 in response to a need for increased regional cooperation in fisheries matters. Most of the FFA Member States are parties to the 1982 UNCLOS Convention, and all of them have declared 200-nautical-mile EEZs or fisheries zones. FFA Member States are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa.

States in the South Pacific to claim jurisdiction over the abundant stocks of highly migratory tunas in the region, which are for the most part harvested by DWFN fleets.¹

3.1.2 The South Pacific Forum Fisheries Agency

FFA was established in 1979 primarily as a consultative and advisory body, in response to a need for increased regional cooperation in fisheries matters. The primary purpose of FFA is to assist Member States in the exercise of their sovereign rights of management and to promote regional cooperation. A particular feature resides in the fact that the FFA Convention explicitly excludes DWFNs from membership. However, it recognizes that effective cooperation for the conservation and optimum utilization of the highly migratory species of the region will require the establishment of additional international machinery to provide for cooperation between coastal states in the region and all states involved in harvesting the resource. Funding for FFA comes from contributions by Member States and extra-budgetary funds from international aid donors. Core FFA activities include an economic and marketing programme, a legal programme, an information technology programme and an MCS programme.

3.1.3 The FFA MCS programme

The regional fisheries surveillance programme was established at FFA in 1986 in order to promote regional coordination and cooperation in fisheries surveillance and enforcement, and since 1992 has emerged as one of FFA's core and most important activities. The primary objective of the programme is to enhance the MCS capabilities of FFA Member States. This is to be achieved through:

- € regional coordination of fisheries surveillance and enforcement operations;
- € collating reports and information on activities of foreign fishing vessels and other appropriate information for distribution to Member States; and
- € provision of technical assistance to governments in areas such as:
 - provision of information on alternative surveillance equipment, systems and arrangements;
 - evaluation of fisheries surveillance requirements;
 - evaluation of technical, legal and economic aspects of fisheries surveillance capacity and efficiency; and
 - preparation of manuals for fisheries surveillance and enforcement staff.

1. The western tropical Pacific region, which encompasses the area served by the FFA, covers an area of approximately 24.8 million km². The combined EEZs of the 14 island States which are members of the FFA cover an area of around 20.1 million km², or 81% of the total area. In contrast, the total land area of these island countries is 0.527 million km², or 2% of the total, the remaining 19% of the total area being high seas.

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The programme has four sub-programmes, namely: Regional Register; Observation and Monitoring; Vessel Monitoring Systems (VMS); and the Maritime Surveillance Communications Network.

The regional collaboration led to:

- € coordination of conventional air and surface surveillance, with the assistance of Australia and New Zealand;
- € national and regional observer programmes, which provide specialized training for observers, and collect, analyse and disseminate observer data;
- € training programmes and manuals for all those involved in the prosecution of fisheries offences, including investigators and prosecutors;
- € sub-regional and regional consultations of legal experts to discuss issues of interest, one of which has led to the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region;¹
- € harmonization of fisheries legislation, in particular with regard to the legal powers given to enforcement officers in each jurisdiction, to the scale of offences, and terms and conditions of access for foreign fishing vessels;²
- € a regional register of foreign fishing vessels in order to keep track of all foreign fishing vessels active in the FFA Region. Registration is an annual requirement and the registration year runs from 1 September to 31 August.³ Before any foreign fishing vessels can be licensed by any FFA Member State, it must be in good standing on the Regional Register; and
- € the promotion of regional standards for VMS. Discussions with a view of identifying possible solutions to legal problems relating to the use of VMS as a management and enforcement tool are currently ongoing.⁴

Additional MCS developments are likely to be guided by the 1995 UN Fish Stocks Agreement, as this agreement contains far-reaching provisions in relation to enforcement, including provisions relating to boarding and inspection on the high seas and port State control.⁵

1. The Niue Treaty was adopted by the FFA Member States at Alofi, Niue, in May 1992, and entered into force in May 1993. It was elaborated with the assistance of the FAO Legal Office.

2. See the *Agreement on Harmonized Minimum Terms and Conditions of Access*. The focus is in particular on terms and conditions relating to the marking of fishing vessels, the report details of catch and position, the use of standardized catch and effort logsheets; requests for observers on board, the appointment of agents to respond to legal process, as well as transshipment matters.

3. In the 1995/96 registration year, some 1 400 fishing and support vessels were on the Register.

4. Two VMS Legal Workshops have been convened under the auspices of FFA, in September 1997 and February 1998. The first looked into the possible options available for requiring legally the installation and utilization of VMS, and second considered the legal issues related to the "post-installation" period, such as the use of VMS information for enforcement and for management purposes. Both Legal Workshops were attended by a representative of the FAO Legal Office.

5. Since 1994 there has been underway a consideration of an arrangement with respect to the highly migratory species (tuna stocks) in the South Pacific. Meetings were held at Honiara (the Multilateral High-level Conference on South Pacific Tuna Fisheries, Honiara, Solomon Islands, December 1994) and at Majuro (Second High-level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western Central Pacific, Majuro, Republic of the Marshall Islands, June 1997); and a third was planned for Tokyo (Tokyo Japan, 22 to 26 June 1998). The meetings were attended by FFA Member States, DWFNs such as Japan and the USA, and other observers for international fisheries organizations. The broad objective of

3.2 West Africa and the Sub-Regional Fisheries Commission

3.2.1 *The Sub-Regional Fisheries Commission and the fisheries resources in the sub-region*

The Convention establishing the Sub-Regional Fisheries Commission (West Africa) (SRFC) dates back to 1985.¹ The Commission is competent to deal with fisheries matters within its area of competence.² Its main objective is to harmonize the long-term policies of Member-States in the preservation, conservation and exploitation of fisheries resources for the benefit of their respective populations. It provides a general framework for its Member States to harmonize fisheries legislation and cooperate in MCS matters.

Substantial demersal and pelagic fish stocks can be found in the region and traditionally there has been a significant number of foreign vessels fishing high-value species such as shrimp, cephalopods and hake. In some countries, competition occurs between industrial fishing fleets and the important artisanal fishing sector.

3.2.2 *SRFC and MCS*

Over the past 2 decades there has been an increasing awareness in the sub-region of the benefits of cooperation in fisheries matters, and in particular in MCS matters. The objectives of cooperation include the harmonization of fisheries laws and regulations, as well as the development of cooperation in matters of surveillance and research.

From 1987 onwards, SRFC adopted several legal instruments, including a convention relating to sub-regional cooperation in the exercise of the right of maritime hot pursuit, and a protocol relating to certain practical measures for the coordination of surveillance operations. As a result of technical meetings, SRFC has also endorsed reference documents on the status of observers and the marking of fishing vessels. The international legal instruments have not yet come into force but, in both cases, several countries, recognizing the importance of cooperation and working towards common policies in the areas of common concern, have started to implement a number of the provisions.

The regional collaboration in MCS focuses on the following areas:

- € harmonization of laws and regulations in order to ensure conservation and management measures which are compatible with each other within different Member States and to develop similar enforcement powers and scale of penalties.³ As a result of the efforts being developed in this area, the licensing systems and procedures as well as observers-related rules⁴ and the surveillance procedures are similar¹;

the meetings is to work towards an arrangement under the 1995 UN Fish Stocks Agreement. A target date of June 2000 has been set for completion of the work.

1. Member States of the SRFC currently are Cape Verde, the Gambia, Guinea Bissau, Guinea, Mauritania and Senegal.
2. The area of competence is geographically not specifically defined, but the Convention contains references to the "Sub-region and the EEZs" of the Contracting Parties.
3. See also Report of the Seminar on the Harmonization of Fisheries Legislation of the States Members of the Sub-Regional Fisheries Commission, Senegal, Dakar, 28 November - 2 December 1994. Field Document No.7 of Project [FAO] GCP/RAF/302/EEC.
4. Report of the Technical Consultation on Fisheries Observers in West Africa. Dakar, Senegal, 11-13 December

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- € standardization of the marking of fishing vessels in accordance with FAO's Standard Specifications for the Marking and Identification of Fishing Vessels;
- € establishment of a sub-regional register of fishing vessels. The national legislation of five countries in the sub-region have provided for national registers. Efforts are being developed towards the adoption of a uniform vessel registration form and a sub-regional register. The disparity of the data collected is still substantial; and
- € coordination of sub-regional air surveillance² with a view to collecting air surveillance data and assisting countries in taking appropriate steps in case of infringements.

Attempting to cooperate at sub-regional level in MCS in West Africa is a very challenging task. Apart from the significant cultural, geographical and political differences, additional obstacles are limiting progress in areas of cooperation, such as the various legal systems (common law, civil law and Portuguese system); language; diversity of control services and prosecution procedures; and the absence of common software to handle data. SRFC must continue to build on what has been started and show determination in the implementation of common policy decisions towards cooperation in MCS.

4. CONCLUSION

MCS is a key component in fisheries management and it deserves a common policy at regional or sub-regional level. A critical requirement for effective regional MCS is the establishment of a coordinating mechanism, with well-defined objectives and a clear work plan. Transparency in and communication of the efforts developed towards cooperation in MCS related matters is essential in order to show all relevant players that the rules and their implementation are in line with the common policy adopted.

Additional crucial elements towards successful MCS cooperation include training and awareness creating initiatives, including for observers; for personnel involved in prosecution; the preparation of common training manuals; the availability of computer technology to compile and transmit data, and to cross-check logbook data; and – last but not least – regular formal and informal communication among the fisheries or other maritime authorities of the countries concerned.

Finally the working of MCS cooperation is also due to a strong political commitment to regional cooperation in MCS and to making it work. A situation is unlikely to improve unless political resistance is overcome, and systems put in place to collect data, to elaborate and enforce management measures. However, there are areas for collaboration – such as harmonization of laws and regulations – which could constitute easily a first modest step for action towards regional collaboration in MCS.

As such, the present regional workshop may recommend the holding of a regional technical meeting on legal matters, and in particular on the harmonization of fisheries legislation. The major objective could be to identify areas within which harmonization would be desirable and feasible. Moreover, the development of bilateral and sub-regional/multilateral approaches could

1995. Field Document No.34 of Project [FAO] GCP/RAF/302/EEC.

1. On 14 July 1993, SRFC adopted a Convention regarding the determination of conditions of access to and exploitation of fisheries resources off the coasts of SRFC Member States.
2. See Lux Development Project on Sub-Regional Air Surveillance, based in the Gambia.

be recommended for the purposes of cooperating in more sensitive areas like surveillance and enforcement.

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